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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,243	10/13/2003	William J. Vary	V 6-002-01-US	3021
22854	7590	10/11/2007		
MOORE & HANSEN, PLLP 225 SOUTH SIXTH ST MINNEAPOLIS, MN 55402			EXAMINER GUADALUPE, YARITZA	
			ART UNIT 2859	PAPER NUMBER
			MAIL DATE 10/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/684,243

Applicant(s)

VARY, WILLIAM J.

Examiner

Yaritza Guadalupe-McCall

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-14 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) ☐ Notice of References Cited (PTO-892) | 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) ☐ Notice of Informal Patent Application |
| 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) ☐ Other: _____ |

DETAILED ACTION

**REOPENING OF PROSECUTION –
NEW GROUND OF REJECTION AFTER NOTICE OF APPEAL**

The finality of the previous Office Action mailed on March 14, 2007 is hereby withdrawn in view of a Pre-Appeal Brief Conference Request filed July 31, 2007, and held on August 29, 2007.

Allowable Subject Matter

1. The indicated allowability of claims 1 - 14 is withdrawn in view of the Pre-Appeal Conference held. Rejection based on the new interpretation follows.

Election/Restrictions

2. This application contains claims directed to the following patentably distinct species:
 - a. The species including a snap line suitable for receiving and transferring powdered material,
 - b. The species including a method of treating powdered material.

The species are independent or distinct because the inventions do not overlap in scope, i.e., are mutually exclusive, since the species of (b) does not require a strand of material, i.e., snap line.

3. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1 and 11 appear to be generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. A telephone call was made to Mr. Robert C. Freed on October 2, 2007 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 18 – 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rangell (US 6,203,602) in view of Dumont et al. (US Pub. No. 2006/0122323).

With regards to claim 18, Rangell discloses an apparatus suitable for use in applying linear coating of powdered material to a surface; the apparatus comprising a body (14) having an interior; and a predetermined length of line (13) retractably retained within the interior; wherein the predetermined length of line has been treated with a water repellant / water proof material (As stated in the Abstract, See Column 3, lines 42 – 43).

Rangell fails to disclose said material being a silicone based water repellent material as stated in claim 18.

With regards to claim 18 : Dumont et al. teaches a silicone emulsion for coating fibrous substrates (i.e. also interpreted as lines or cords) comprising a silicone based water repellent material (See paragraph [0001]) in order to increase the degree of impermeability and water repellent character of the fiber (See paragraph [0003]). Therefore, it would have been obvious to combine the teachings of Dumont et al., i.e., silicone emulsion applied to a substrate or fiber, with the teachings of Rangell, i.e., length of line treated with a water repellent material, in order to increase the degree of impermeability and water repellent character of the fiber (See paragraph [0003]) and since the use of the silicone based material used by Dumont et al. and the water repellent material used by Rangell, absent any criticality, are only considered to be the use of a “ preferred ” or “ optimum ” material out of a plurality of well known materials that a person

having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant's apparatus, i.e., suitability for the intended use of Applicant's apparatus. See *In re Leshin*, 125 USPQ 416 (CCPA 1960) where the court stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious.

In regards to claim 19, the combination of Rangell and Dumont et al. further comprises a quantity of powdered material (i.e. chalk and concrete dye as taught by Rangell's disclosure) deposited within the interior.

Regarding claim 20, the combination of Rangell and Dumont et al. also teach a device wherein the powdered material (i.e. chalk and concrete dye as taught by Rangell's disclosure) is substantially water resistant.

Response to Arguments

7. Applicant's arguments with respect to claims 1 – 14 and 18 - 20 have been considered but are moot in view of the new ground(s) of rejection.

In July 31, 2002, applicant requested a Pre-Appeal Brief Conference, which was conducted on August 29, 2007. As a result of the conference, the following decisions were made by the conferees:

c. The rejection of claims 18 – 20 was deemed proper and maintained for purposes of the present Office Action and any future Appeal Brief that may be filed by Applicant.

d. In addition, an election of species was recommended since the subject matter of claims 11 – 14 is a separate embodiment for treating a powdered material and does not require the presence of a stand of material as required in claims 1 – 10. See paragraph 2 above.

e. The allowability of claims 1 – 14 was questioned and withdrawn since the claim interpretation given previously by the Examiner was broader than required by the claimed structure. The new interpretation will be made of record upon formal election of the species is submitted by Applicant.

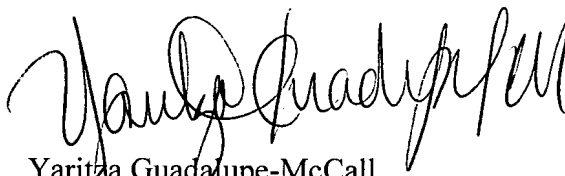
Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe McCall whose telephone number is (571)272-2244. The examiner can normally be reached on 8:00 AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

YGM
October 2, 2007

A handwritten signature in black ink, appearing to read 'Yaritza Guadalupe-McCall', is written over a rectangular stamp area.

Yaritza Guadalupe-McCall
Primary Examiner
Art Unit 2859